IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 6271 of 2005

Between:

M/s. Mc. Dowell & Company Limited, Having its Registered Office AT Mc. Dowell House, 51 Rich Mond Road, Bangalore-25, Rep. by Power of Authority Holder Shri Krishna Swamy Iyenger, S/o. Ranga Chari, Aged About 49 Years, R/o. 345-SRT, S.R. Nagar, Hyderabad.

..... PETITIONER

AND

1. The Principal Secretary to Government , Revenue Department, Secretariat Buildings, Hyderabad.
2.The Commissioner of Appeals, Urban Land Ceilings, Nampally Station Road, Hyderabad.
3.The Special Officer and Competent Authority, Urban Land Ceiling, Visakhapatnam.
4.The District Collector, Visakhapatnam.
5.The Commissioner, Municipal Corporation, Visakhapatnam.
6.The Vice Chairman, Visakhapatnam Urban Development Authority Visakhapatnam.
7.The Mandal Revenue Officer, Visakhapatnam Urban Mandal, Visakhapatnam.
8.The Station House Officer, Visakhapatnam Town, Visakhapatnam.
9.The Vice Chairman & Managing Director, Andhra Pradesh Industrial Infrastructure Corporation Limited, 6th Floor, Parisramabhavan, 5-9-58/B, Basheerbagh, Hyderabad - 500 004., Andhra Pradesh.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order more particularly one in the nature of Writ of Mandamus for a declaration that the inaction of the 1st respondent in issuing the Government Order G.O.Ms.No. 829 Rev.Uc-I Dept., dated 19-10-2004 is an arbitrary, illegal action and

contrary to the provisions of the Urban Land Ceiling Act more so when a statutory appeal bearing Appeal No. 87/2004 is pending U/s. 33 of the Act before the 2nd respondent and set aside the said G.O.Ms.No. 829 Rev.Uc-1 Dept., dated 19-10-2004 and alternatively direct the 1st respondent Government to consider the Petitioner Company request for developing the information Technology Park in its land of an extent of 4,3101 Hectares in T.S.No. 1011/1A1,A2 of Waltair Ward, Visakhapatnam on its own with the Association of the Information Technology Entrepreneurs and further directions to the respondents not to allot, entrust or assign theland of the petitioner Company land in favour of any 3rd party or 3rd parties or any institution or institutions in pursuance G.O.Ms.No.829 Rev. Uc-I Dept., dated 19-10-2004 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner : MR. C.HANUMANTHA RAO

Counsel for the Respondents : GP FOR REVENUE

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

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WRIT PETITION NO.6271 OF 2005

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ORDER:

The petitioner states that by virtue of the Order of the Bombay High Court in Company Petition No.236 of 1981 dated 31-03-1982 under Section 394 of The Companies Act, 1956, M/s. Hindusthan Polymers Limited, a Sick Company was amalgamated with the petitioner Company and all the assets and liabilities of M/s. Hindusthan Polymers Limited had been vested with the petitioner Company. Much prior to that, M/s. Hindusthan Polymers Limited made an application under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the Act') seeking exemption of its lands to an extent of 101.3985 hectares situated at Venkatapuram, Gopalapatnam, Vepagunta Villages and Waltair Uplands. In pursuance thereof, the Government issued orders vide G.O.Ms.No.1033, Revenue (UC.III) Department, dated 8-10-1992 granting exemption to an extent of 67.2165 hectares subject to certain conditions stipulated thereunder. However, subsequently vide notice dated 19-7-1986 the petitioner was called upon to show-cause as to why action should not be taken to withdraw the exemption granted to an extent of 4.3101 hectares on the ground of alleged non-compliance with the conditions stipulated. The petitioner submitted its explanation. However, the Government vide orders under G.O.Ms.No.630, dated 26-7-1997 has withdrawn the exemption granted under G.O.Ms.No.1033, dated 8-10-1992. Challenging the said order, the petitioner filed W.P.No. 23773 of 1998. The said writ petition was allowed, thereby setting aside the G.O.Ms.No.630, dated 26-7-1997 and the matter was remanded to the Government. However, the Writ Appeals preferred by the State Government were allowed and the order of the learned Single Judge was set aside. Though the petitioner Company filed Special Leave Petitions, the same were dismissed by the Supreme Court. The Petitioner Company filed a Review Petition, but the same was also dismissed on 3-4-2002. Thus, the order of the Government in G.O.Ms.No.630, dated 26-7-1997 withdrawing the exemption granted earlier under Section 20 of the Act has become final. Thereafter, the petitioner filed an application under Section 21 of the Act seeking retention of the land for the purpose of construction of dwelling units to the

Weaker Sections. Alleging that the Special Officer and Competent Authority failed to consider the said application, the petitioner filed W.P.No.11591 of 2004. Though initially Status Quo was ordered, subsequently when it was brought to the notice of this Court that the application made by the petitioner under Section 21 of the Act was rejected by the Special Officer by order dated 5-8-2004, the Writ Petition was dismissed by this Court granting liberty to the petitioner to file an Appeal against the order dated 5-8-2004. Aggrieved by the same, the petitioner filed W.A.No.1712 of 2004, but the same was also dismissed. In the circumstances, the petitioner on 26-11-2004 preferred an Appeal under Section 33 of the Act before the Commissioner of Appeals, Urban Land Ceilings, Hyderabad, the 2nd respondent herein, against the order dated 5-8-2004. Pending the said appeal, the petitioner filed W.P.No.24474 of 2004 contending that the Appellate Authority has failed to consider the Appeal. The said writ petition was disposed of by order dated 28-12-2004 leaving it open to the petitioner to pursue his remedies before the Appellate Authority. Questioning the said order, the petitioner filed W.A.No.279 of 2005. The Division Bench disposed of the said Writ Appeal on 24-02-2005 directing the Appellate Authority to take up the Appeal as well as the interim relief sought by the petitioner and to pass orders within one week.

While the things stood thus, this Writ Petition has been filed on 23-03-2005 contending that in spite of the judgment of the Division Bench in W.A.No.279 of 2005, the Appellate Authority failed to pass any orders and in the meanwhile the respondents are taking steps to allot the land in question in favour of the third parties. The petitioner also sought a declaration that the action of the 1st respondent in issuing G.O.Ms.No.829, Revenue (UC.I) Department, dated 19-10-2004 allotting the land in question to the 9th respondent herein – Andhra Pradesh Industrial Infrastructure Corporation Limited as arbitrary and illegal.

When the matter is taken up for consideration, the learned Government Pleader appearing for the respondents 1 to 4 placed before this Court an order dated 24-03-2005 passed by the 2nd respondent Appellate Authority rejecting the interim application filed by the petitioner seeking stay of the order dated 5-8-2004. The relevant portion from the said order may be extracted hereunder :

"The appellant in his affidavit accompanying the petition has stated that the first respondent (Principal Secretary to Government, Revenue Department) is going to allot the land in question in favour of third parties and there may be likelihood to encourage the raising of some structures, if that act is allowed the petitioner company will be put to serious irreparable loss and hardship. A perusal of lower Court record would reveal that the possession of the land covered by the appeal has already been taken over by the Competent Authority u/S.10(6) of the Act on 16-1-1998 as it stood vested in the State by virtue of notification published u/s.10(3) of the U.L.C. Act, 1976 and the State Government in exercise of their powers under Section 23 of the Act have already allotted the said land to various Government Departments / Institutions. In other words, the subject land is no longer lying in the possession of the Appellant.

In view of this fact, I do not find any merit in the petition seeking for issuance of interim directions for maintenance of Status Quo and stay further proceedings in C.C.No.6698/76 on the file of the Second Respondent. Accordingly, the petition is rejected and main appeal is posted for hearing on 29-3-2005."

On behalf of the 9th respondent, a counter-affidavit has been filed stating that since the petitioner failed to comply with the conditions stipulated under the order of exemption dated 8-10-1992, the Government has withdrawn the exemption vide G.O.Ms.No.630, dated 26-7-1997 and pursuant thereto the Mandal Revenue Officer, Visakhapatnam (Urban) has taken possession of the land to an extent of 4.3101 hectares on 16-1-1998. Thereafter, the Government issued G.O.Ms.No.829, Revenue (UC.I) Department, dated 19-10-2004 allotting the said land to the ninth respondent in exercise of the powers conferred under Section 23(4) of the Act for the purpose of setting up Mega Projects like Information Technology Park etc. duly cancelling the allotment agreed to be made earlier to different departments. Consequently, the land was handed over to the 9th respondent Corporation on 20-10-2004 for development of IT Park and the Corporation has erected fencing around the land spending huge amounts and initiated steps for development of IT park by inviting Expression of Interest (E.O.I.) from the reputed Software Development Companies and short-listed the eligible players, thereafter the bid process was taken forward and the bids were solicited from the short-listed bidders. Thus, the plea that the petitioner is in possession of the land in question is false and the writ petition is misconceived and liable to be dismissed.

On the basis of the material on record, it is clear that the land in question to an extent of 4.3101 hectares was allotted to the 9th respondent Corporation as long back as on 19-10-2004, and the possession was handed over to it on 20-10-2004. Thereafter, the petitioner preferred the Appeal under Section 33 of the Act before the 2nd respondent on 26-11-2004 against the order dated 5-8-2004, whereunder the third respondent – Special Officer has rejected the application of the petitioner under Section 21 of the Act. Thus, even by the date of presenting the Appeal, the 9th respondent was already put in possession of the land in question. The 2nd respondent having recorded the said finding of fact, dismissed the interim application of the petitioner by order dated 24-03-2005. Hence, the contentions of the petitioner that pending the Statutory Appeal the land in question cannot be treated as excess and cannot be allotted to third parties and therefore the impugned G.O.Ms.No.829, dated 19-10-2004 is arbitrary and illegal are all without substance and do not deserve any consideration.

The other contentions raised by the petitioner as to their entitlement to file an application under Section 21 of the Act are the subject matter of the Appeal pending before the 2nd respondent and therefore it is for the petitioner to urge all the said grounds before the Appellate Authority. Since the Statutory Appeal is pending, I decline to express any opinion on the said contentions.

Viewed from any angle, the Writ Petition is misconceived and accordingly the same is dismissed. No costs.

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31st March, 2005.

Note:- Furnish CC today.

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To

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2.The Commissioner of Appeals, Urban Land Ceilings, Nampally Station Road, Hyderabad.
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10. Two CCs G.P. for Revenue, High Court of AP Bldgs, Hyderabad (OUT).

11. Two CD copies.